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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/434,965	11/05/1999	ALAIN T. LUXEMBURG	ORT-1060	4589

7590 12/14/2001

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EXAMINER

DECLoux, AMY M

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 12/14/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/434,965

Applicant(s)

Luxembourg et al.

Examiner

DeCloux, Amy

Art Unit

1644



– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 20, 2001
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-18 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

Serial No: 09/434,965
Art Unit: 1644

DETAILED ACTION

Note: The examiner of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Amy DeCloux, Group Art Unit 1644, Group 1640, Technology Center 1600.

1. Applicant's amendment, filed 9/20/01 (Paper No. 8), is acknowledged.
2. The rejections of record can be found in the previous Office Action, mailed 3-14-01 (Paper No. 6).
In view of applicant's amendment and remarks filed 9/20/01, the objection to the specification has been withdrawn, as have the 112 second paragraph rejections, however the 102 rejection has been maintained.
3. MAINTAINED Claims 16 and 18 are rejected under 35 USC 102(e) as being anticipated by US Patent No. 5,731,160.

Applicants contend that since applicants have amended the instant claims so that the term "matrix" has been deleted, and the term "substrate" has been inserted in its place, the rejection should be withdrawn because applicants contend that a substrate for capturing antigens is distinct from the lipid bilayer vehicle or liposome as described in the US Patent No. 5,731,160 by Meleif et al. However, the examiner notes that the instant specification discloses on page 6 lines 4-9, "that a wide variety of MHC coated substrates are suitable for use in the present invention, including, but not limited to...red blood cells, and magnetic beads.." In view of the broad definition disclosed in the instant specification for the term "substrate", it is not clear to the examiner how applicant can exclude liposomes from being encompassed by the term "substrate".

In support of this position it is to be noted that both the liposome of Melief et al. and the red blood cells of applicant (page 6, line 8 of the instant specification) are constituted of a surface which is a lipid bilayer; given this similarity between liposomes and red blood cells, it is not seen how applicant can argue that their substrates exclude liposomes. Therefore, though applicants arguments have been carefully considered, they are not deemed persuasive and the rejection is maintained essentially for the reasons of record.

NEW GROUNDS OF REJECTION

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the Applicant regards as his invention.

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5. Claims 17 and 18 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

A) Claim 17 is indefinite because the term "matrix" lacks antecedent basis.

B) Claim 18 is indefinite because the term "antigen" lacks antecedent basis. It is noted that claim 16 recites the term "antigens".

6. No claim is allowed.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy DeCloux whose telephone number is (703) 306-5821. The examiner can normally be reached Monday through Friday from 9:00 am to 6:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014.

Amy DeCloux, Ph.D.
Patent Examiner,
Group 1640, Technology Center 1600
December 5, 2001

David A. Saunders
DAVID SAUNDERS
PRIMARY EXAMINER
ART UNIT 182 1644